

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

SUCCESSION CAUSE 275 OF 2000

TERESIAH WANJUGU METHU

Alias WANJUGU METHU DECEASED

Versus

ZIPPORAH MBUKI GITHAEDEFENDANT

JUDGMENT

Zipporah Mbuki Githae petitioned for grant of letters of administration intestate in respect of this estate in August 2000. In so doing she stated the beneficiaries of the estate were herself and Nancy Ngima Nduguya. A grant was issued herein on 6th December 2000. Following an application for confirmation of grant the grant was confirmed to the effect that Zipporah Mbuki Githae and Nancy Ngima Nduguya were to get the property ***Mahiga/ Rokera/379*** jointly. An application was filed by Teresa Murugi Gachuru for revocation of that grant. The matter was ordered to be heard by way of viva voce evidence. The applicant in support of her application stated that the deceased was her grandmother. The deceased had three daughters namely Celipha Njoki Mwaniki, Zipporah Mbuki Githae and Nancy Ngima Nduguya. She stated that she was in occupation of the estate property and is still occupying the same. That when the petitioner filed this succession cause she failed to state that she was entitled to a portion that belonged to her deceased mother Celipha Njoki Mwaniki. She stated that she and her mother were cultivating a portion of that land and when her mother passed away she was left cultivating the same. That it was not until a person who had been given the right to oversee that land chased her away when she realized that this succession cause had been filed denying her her right to inherit. Zipporah Mbuki in evidence denied the applicant's claim. She stated that by the time the applicant's deceased mother died the applicant was a young child. That the applicant is married in the same area where the land is. This witness termed the evidence of the applicant as lies. On being cross examined this witness stated that the applicant has been looking after her coffee bushes for a period of 2 years. Nancy Ngima said that the evidence of the applicant were all lies. She however stated that the applicant and her have been living together and were on good terms. She stated that when the applicant's mother died the land had not been consolidated. The applicant called a witness by the name of Peter Kariho. He was of no use to the court because he did not know why he had been summoned to court. I had the opportunity of hearing and observing the witness as they gave their evidence. Both the respondents were very disruptive to the court in speaking even after being cautioned by the court. Their behaviour in my view can be attributed to their advanced age. The applicant and the respondents are in agreement that the applicant is the daughter of Celipha Njoki Mwaniki who was the daughter to the deceased in this estate. Zipporah did even accept that the applicant is in occupation of the property. From the evidence adduced before court and from my observation of the witnesses I find that the applicant was a dependant of the deceased in this matter. I find that she has continually cultivated a portion for that land. By virtue of Cap 26 of the Law of Succession Act I find that the applicant is entitled to a third of the property. The judgment of the court is in the following terms:-

- 1. The title issued in the joint names of Zipporah Mbuki and Nancy Ngima in respect of title Number Mahiga/Rokera/379 is hereby cancelled.***
- 2. The land registrar is hereby ordered to cancel the title issued to Zipporah Mbuki and Nancy Ngima over Mahiga/Rokera/379 notwithstanding that the original title document will not be availed.***

3. That the grant confirmed on 22nd June 2000 in this matter is hereby revoked.

4. That a fresh grant do issue in the following terms; zipporah Mbuki Githae, Nancy Ngima Nduguya and Teresa Murugi Gachuru to get equal portion of the property Mahiga/Rokera/379.

5. there shall be no orders as to costs in respect of the application for revocation dated 26th December 2006.

DATED AND DELIVERED THIS 22ND DAY OF OCTOBER 2008

MARY KASANGO

JUDGE